

LEGISLATIVE PROPOSALS FOR FY 2012
KAHO`OLAWA ISLAND RESERVE COMMISSION
December 2010

1. Conveyance Tax Revenue:

Background: The Conveyance Tax (Chapter 247, HRS) is imposed on all transfers or conveyances of real property. The distribution of this tax revenue is as follows:

- 10% to the Land Conservation Fund (legacy land acquisitions).
- 25% to the Rental Housing Trust Fund (increase to 30% in FY13).
- 20% to the Natural Area Reserve Fund (increase to 25% in FY13).
- Balance to the general fund.

In FY2008, \$43.421M was collected under the Conveyance Tax, while in FY2009, \$23.772M was collected. Data for FY2010 collections have not been publically posted.

Request: Add the Kaho`olawe Rehabilitation Trust Fund to HRS 247-7 as an additional recipient for the distribution of Conveyance Tax revenue.

Justification: The purposes of the Kaho`olawe Rehabilitation Trust Fund is similar to the purposes of the Land Conservation Fund and the Natural Area Reserve Fund so that Kaho`olawe could be considered as an additional recipient to the disposition of this tax.

The Land Conservation Fund, was established under Chapter 173A, HRS to acquire and manage lands that “have natural, environmental, recreational, scenic or historic value” to the State. HRS 173A-5 allows these funds to be used for the “cost necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands...” These funds can be used for invasive species control, as well as reforestation and run-off mitigation controls. Both of the last two purposes are core functions and great challenges of the Kaho`olawe Island Reserve Commission (KIRC).

The Natural Area Reserve System (NARS) was established under Chapter 195, HRS to protect and preserve unique natural assets, for the enjoyment of future generations and to provide base lines against which changes in the environment can be measured. The Natural Area Reserve Fund was created for the identification, establishment, and management of natural area reserves.

Both funds echo the KIRC’s mission and vision for the restoration and preservation of the Kaho`olawe Island Reserve (Reserve) and to provide meaningful and safe use of the Reserve. Therefore, the Kaho`olawe Rehabilitation Trust Fund could be considered an ideal match to the existing beneficiaries of HRS 247-7.

Implementation: The Kaho`olawe Rehabilitation Fund could be added as an additional beneficiary to the Conveyance Tax distribution. We are proposing a 7.5% to 10% distribution to the Kaho`olawe Rehabilitation Trust Fund as an additional beneficiary; this would mean a reduction in the distribution to the general fund by the equivalent amount with no changes or impacts to current recipients.

2. Capital Improvement Project Funding for Kaho`olawe Sustainable Energy:

Background: The island's infrastructure, built by the U.S. Navy in the 1980's and 1990's, was designed to support its massive unexploded ordnance (UXO) clearance projects. The existing infrastructure is too large and inefficient for the KIRC's long-term, sustainable restoration of Kaho`olawe.

The KIRC's center of operation is located at Honokanai`a Bay, on the southern end of Kaho`olawe. This military-era base camp supports all of our on-island operations including environmental restoration, natural and historic resources management, as well as providing security for the island. Since assuming responsibility for the management of the Reserve in 2004, the KIRC is slowly retrofitting its existing infrastructure to meet its current and long-term needs without depleting the Trust Fund. We currently generate our own on-island electrical power with diesel generators to produce potable water, maintain lights and communications, and provide energy to store food and cook meals for our staff and volunteers. Our focus for the past few years has been to improve our electrical system's fuel economy through a program of energy conservation, consolidation and securing excess equipment and facilities, and resizing our generators to be more efficient. Even with these improvements, a significant portion of our operation budget is still used to transport fuel to Kaho`olawe to operate and maintain our generators.

Request: Request \$ 1.0M CIP funding to design and build a renewable energy system on Kaho`olawe to convert the entire base camp facility to alternative, sustainable energy.

Justification:

The KIRC has the unique opportunity to create a completely self-sufficient and sustainable operation on Kaho`olawe that could become the model for the future of Hawaii. An off-grid, self-sufficient base camp could become a test bed for sustainable designs, renewable energy and green building practices in Hawaii. The conversion of our base camp's central electrical system to renewable energy sources would be a giant step toward energy self-sufficiency on Kaho`olawe. The island would still require fossil fuel storage for on-island transportation and field equipment, but by building a renewable energy system on Kaho`olawe with sufficient excess capacity, we could see a transition to electric vehicles and portable tools in the near future as an offshoot of a centralized, renewable energy grid .

3. Addition of Asset Forfeiture to our Statues:

Background: On June 2, 2008, a helicopter landed on Kaho`olawe in violation of Kaho`olawe's access control of the island and its surrounding waters. The helicopter was observed on Kaho`olawe's southern shoreline by KIRC staff that approached the pilot and inquired if there were any medical or equipment problems. The pilot stated that there were no problems and that he decided to land on Kaho`olawe to have lunch. The Division of Conservation and Resources Enforcement (DOCARE) cited the owner and pilot of the helicopter for trespassing while the Maui Prosecutor's Asset Forfeiture Branch seized the helicopter.

The Hawai'i Supreme Court, in *Carlisle v One (1) Boat and Tran* (Nov 17, 2008), overturned an Intermediate Court of Appeals decision that allowed asset forfeiture in cases of resource destruction – ultimately taking the teeth out of any enforcement rules in place. According to the decision, the penalty

sections of DLNR (and, therefore, KIRC) rules must specifically authorize forfeiture. Eventually, the helicopter was returned to the owner, but he was still found guilty of trespass.

Request: Request that provisions for asset forfeiture be added to HRS 6K-8, which provides penalty provisions for the KIRC.

Justification: Since FY 2009, the KIRC has implemented a vessel permit and registration process that has raised the awareness of permitted activities within the Reserve. We have noticed a marked decrease in fishing and trespass violations since this program was enacted. However, the addition of the forfeiture clause to HRS 6K-8 would greatly increase the penalties for violators, thus strengthening our enforcement capabilities and our protection of the Reserve's resources.

4. General Funding

Background: The majority of the KIRC's funding is from a dwindling trust fund established in 1994 during the federal cleanup of Kahoʻolawe. This federal appropriation, totaling \$44 million over a period of several years, even though considerable, was not substantial enough to establish a sustainable endowment for the long-term restoration of Kahoʻolawe. Over the past 16 years, this has resulted in KIRC seeking the support of many outside sources to fund projects that accomplish the mandate of Chapter 6K, HRS. In addition to the trust fund, we also apply for Federal, State, and County grants, charitable contributions and, since FY 2009, we have developed a fee-based permit system that allows us to recover some of the costs of protecting and restoring Kahoʻolawe. The KIRC has never received general fund monies from the State.

Foreseeing the economic downturn that hit Hawai'i in FY 2009, we reduced our annual operating budget from \$6.67 million to \$5.0 million (a 25 percent decrease). In addition to these budget reducing opportunities, we developed partnerships with other government agencies in an effort to "do more with less." This year, we saw a decrease in program grant income as we had completed a NOAA-sponsored grant the previous year and were approaching the end of a Hawai'i Department of Health Clean Water Act grant. We were awarded and began two significant grant projects with NRCS and USFWS, but at a much lower funding level than the previous years. A significant decrease in interest earned on the trust fund was due to the drastic drop in interest rates felt by all endowment-based organizations.

In FY 2009, we implemented several key initiatives to better manage and conserve our trust fund. We employed project-based accounting and monthly budget variance analysis that dramatically improved spending control throughout the year. We established internal spending goals for each project that resulted in ending the fiscal year more than \$680,000 (12 percent) under budget. We developed new revenue sources by requiring fee-based permits for on-island access, boating registration and enforcement restitution that generated \$44,500 in six months in FY 2009. Lastly, we conducted an in-depth analysis of our greatest expenditures and redesigned operations to significantly reduce the depletion of the trust fund while still maintaining a high level of service.

At the end of FY 2010, we had a balance of \$13.47M remaining in the trust fund. Based upon our FY 2011 budget and our revenue forecast for the same period, we are expecting to have a balance of \$10.6M remaining in the trust fund at the end of this fiscal year. Even with our continuing budget cuts and staff reductions, we are estimating only three to four years left of funding for the KIRC unless a permanent funding source can be established for the KIRC

Request: We request general funding support of \$2.0M to \$2.5M annually for KIRC's operation by FY2013 in order to continue KIRC's mission.

Justification: When the State of Hawaii accepted the return of the island of Kaho`olawe in 1994, it accepted the responsibility "to preserve and protect a corner of their island state so that future generations can become familiar with their island's past human and natural heritage. For many Native Hawaiians and others, Kaho`olawe is a special place that has been sanctified by the loss of life in a struggle between traditional values and Western concepts of land use and management" (Restoring a Cultural Treasure, Kaho`olawe Island Conveyance Commission).

As stated in the Federally-mandated Kaho`olawe Island Conveyance Commission (KICC) final report to Congress in 1993, "in the short term, federal funds will provide the bulk of the program support for specific soil conservation projects and related activities. In the longer term, however, state revenues will be needed to continue and enhance those activities initiated with federal funds." For the past 16 years, the initial Federal funding has allowed the KIRC to establish many of its innovative programs that emphasize ancestral and traditional knowledge, provide a cultural approach of respect and connectivity to the environment, and integrate ancient and modern resource management techniques.

Without a secure future funding source, the KIRC will again be reducing its staff and operations in FY 2012 in order to extend the life of the trust fund. We will shrink our operations to minimal core functions that still allow basic environmental restoration, meaningful safe access to the island for a limited number of volunteers, and the protection of the natural and cultural resources of the island and its waters. This level of operation will force the KIRC to look at every possible facet of our operation to trim costs that will make us leaner on one hand, but also less capable to adjust to the unexpected on the other.

In order to continue our programs at current funding levels, we are proposing a partial shut-down of on-island operations for a portion of each month to reduce operating costs. We intend to keep a staff at a bare minimum on island to protect our facilities and provide some level of security for the island and our assets, but little or no restoration efforts during these periods. Our goal is to continue to protect what makes Kaho`olawe special and to maintain efforts made in restoring its barren and scared landscape, but with fewer resources and less help. We seek assistance from the State to help us continue the task that was accepted by the State and assigned to the KIRC 16 years ago on behalf of the people of Hawaii.

The amount of our general fund request represents the cost of the core functions of the KIRC that have been deemed the obligation of the State: to manage and protect the diverse resources of the island and its surrounding water's, to develop and maintain programs that focus on Native Hawaiian culture, education and research, and to restore the island's landscape. Even with this annual funding request we will not be able to fully implement all of our programs, but we only seek what is needed to perform our core functions. We will continue to develop partnerships, seek additional outside funding and develop revenue sources to further enhance our abilities to restore Kaho`olawe. This funding request will ensure the commitment of the State to the protection and restoration of Kaho`olawe for future generations.